

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ROLAND GUTIERREZ; SARAH ECKHARDT;
and the TEJANO DEMOCRATS,

Plaintiffs,

V.

GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOSE A. ESPARZA, DEPUTY SECRETARY OF STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY,

Defendants.

Case No. 1:21-cv-00769-RP

JOINT ADVISORY

Plaintiffs Roland Gutierrez, Sarah Eckhardt and the Tejano Democrats and Defendants Governor Greg Abbott and Deputy Secretary of State Jose A. Esparza respectfully file this Joint Advisory pursuant to the Court's Order dated September 30, 2021 (ECF No. 16) to advise the Court of the following :

- 1) On October 25, 2021, the Governor signed redistricting legislation passed by the Texas House of Representatives and the Texas Senate containing reapportioned electoral districts for the U.S. House of Representatives, the Texas House of Representatives, the Texas Senate, and the State Board of Education. The specific legislation includes the following plans:

Congress: Plan C2193 (Senate Bill 6, 87th Leg., 3d C.S.).

State House: Plan H2316 (House Bill 1, 87th Leg., 3d C.S.).

State Senate: Plan S2168, Senate Bill 4, 87th Leg., 3d C.S.).

State Board of Education: Plan E2106 (Senate Bill 7, 3d C.S.).

The referenced plans are available to be viewed at <https://dvr.capitol.texas.gov>.

2) In light of the passage of redistricting legislation, and in view of the issues presented in the pending Motion for Preliminary Injunction (ECF No. 10) and Motion to Dismiss

or Abate Proceedings (ECF No. 12), Plaintiffs now intend to pursue similar claims in state court, the resolution of which may impact the issues before the Court.

- 3) As such, Plaintiffs have asserted they do not need an immediate ruling on their Motion for Preliminary Injunction. In turn, in light of the Plaintiffs intention to pursue this matter in state court litigation, and the Plaintiffs indication they do not need an immediate ruling on their Motion for Preliminary Injunction, the Defendants do not seek an immediate ruling on their Motion to Dismiss or Abate.
- 4) In light of the above, the parties do not intend to urge those motions at the hearing. District courts have broad “discretion and inherent power” to stay or continue proceedings “until preliminary questions that may dispose of the case are determined.” *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). That power includes issuing a stay or continuance before reaching the issue of jurisdiction. *See, e.g., Serafine v. Abbott*, No. 1:20-cv-1249-RP, 2021 WL 3616102, at *2 (W.D. Tex. May 12, 2021) (Pitman, J.) (Plaintiff sued Governor Abbott over “vexatious litigants” statute, court stayed discovery pending resolution of *Younger* abstention question).
- 5) Plaintiffs remain opposed to Defendants’ Motion to Consolidate (ECF No. 20) filed on October 20 and set for hearing this Thursday, October 28. *See* ECF No. 21. Defendants continue to seek consolidation, and maintain that it is proper under the first-to-file rule and Rule 42(a) of the Federal Rules of Civil Procedure and intend to urge their motion at the October 28, 2021 hearing.

Date: October 26, 2021

Respectfully submitted.

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Attorney General of Texas

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COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 26, 2021, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for the Plaintiffs on October 26, 2021, who agreed to the filing of this joint advisory.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN